In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 569

WILLIAM S. HERRESHOFF, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In his income tax return for 1956, petitioner deducted $2000 as a casualty loss (§ 165(c)(3), Internal Revenue Code of 1954) arising from the theft of certain papers. The Tax Court disallowed the deduction because of petitioner's failure to offer any proof of the value of the papers. The court of appeals affirmed.

The Tax Court also included in petitioner's income an item of $951 credited to his account by the trustee

of a testamentary trust. On appeal, petitioner contended for the first time that the credit represented a repayment of a loan rather than income. The court of appeals held that the contention could not be raised for the first time on appeal.

For the reasons stated by the court of appeals (Pet. 10-11), the decision is correct. There are no grounds for further review. The petition for certiorari should be denied.

Respectfully submitted,

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Solicitor General.

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NOVEMBER, 1964.

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